

ENTERED

September 28, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

MARK CLIFF SCHWARZER,

Plaintiff,

v.

BOBBY LUMPKIN; TRAVIS WHITE;
and PATRICK O'DANIEL,

Defendants.

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Civil Action No. 6:18-cv-00029

ORDER ACCEPTING MEMORANDUM AND RECOMMENDATION

Pending before the Court is the February 2, 2021 Memorandum and Recommendation ("M&R") signed by Magistrate Judge Jason B. Libby. (Dkt. No. 27). In the M&R, Magistrate Judge Libby recommends that the Court deny Defendant Bobby Lumpkin's Motion to Dismiss Pursuant to Rule 12(b)(1) because *pro se* Plaintiff Mark Cliff Schwarzer's allegations are sufficient to show standing. (Dkt. No. 20).

The Parties were provided proper notice and the opportunity to object to M&R. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). No party has objected.¹ As a result, review is straightforward: plain error.² *Guillory v. PPG Indus., Inc.*, 434 F.3d 303, 308 (5th Cir. 2005).

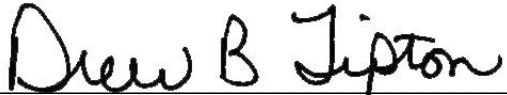
¹ After Magistrate Judge Libby signed this M&R, Schwarzer subsequently filed "objections." (Dkt. No. 31). Those objections, however, appeal Magistrate Judge Libby's non-dispositive order. *See* (Dkt. No. 28). No party has objected to the instant M&R.

² By contrast, when a "district court undertakes an independent review of the record," the "review is de novo, despite any lack of objection." *Alexander v. Verizon Wireless Services, L.L.C.*, 875 F.3d 243, 248 (5th Cir. 2017).

No plain error appears. Accordingly, the Court **ACCEPTS** the M&R as the Court's Memorandum Opinion and Order. The Court **DENIES** Defendant Bobby Lumpkin's Motion to Dismiss.

It is SO ORDERED.

Signed on September 28, 2021.



DREW B. TIPTON
UNITED STATES DISTRICT JUDGE